in the Circuit Court on the question of a permanent injunction. At that hearing, additional proofs were submitted by both parties. After hearing, the Circuit Court entered a limited permanent injunction forbidding picketing except at the Terminal gate at Bay and Stuart Streets designated for use by FEC employees. We attach a copy of the Final Decree of the Circuit Court as Appendix A hereto.

This permanent injunction—as was the temporary injunction—is now subject to the normal appellate processes in the courts of Florida, should petitioners care to invoke them. The petitioners—who sought to have the Florida appellate courts review the issuance of the temporary injunction through an extraordinary writ of prohibition, rather than go through their normal appellate remedies[1]—now have 60 days from July 29, 1966, to file their notice of appeal to the District Court of Appeal to obtain the first stage of appellate review of the permanent injunction. As of the date on which this Supplemental Brief in Opposition went to press, September 1, 1966, no such notice of appeal had been filed.

The Petition for Certiorari filed by petitioners in this matter seeks to have this Court review a judgment which has not been shown to rest other than on adequate state grounds,[2] a judgment which is essentially interlocutory,[3] and a judgment which does not appear clearly to have been rendered "by the highest court of a state in which a decision could be had."[4] The normal course of proceedings

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[1] See Brief in Opposition, pp. 7-8, and n. 10, for a description of those remedies.

[2] Brief in Opposition, pp. 7-11.

[3] *Id.*, pp. 11-12.

[4] 28 U.S.C. §1257. See Brief in Opposition, pp. 11-13 n. 12.

would contemplate, not this Court's review of a judgment posing so many jurisdictional difficulties, but petitioners' exhaustion of their state appellate remedies, either on interlocutory appeal from the temporary injunction or on appeal from the final injunction, before coming to this Court on a certiorari.[5] Petitioners have never sought any appellate remedies with respect to the interlocutory injunction, and they have not yet sought appellate remedies with respect to the permanent injunction. Review here can follow (if substantively appropriate) petitioners' appellate remedies in the Florida courts, when and if petitioners proceed with them. We submit that these circumstances further counsel against the grant of certiorari to review the District Court of Appeal's denial of petitioners' Suggestion for a Writ of Prohibition in this matter.

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[5] If the certiorari was sought from the affirmance of an interlocutory injunction, the jurisdictional doctrine of *Local No. 438* v. *Curry*, 371 U.S. 542 (1963), would have to be invoked.

CONCLUSION

For the reasons stated in our Brief in Opposition and herein, the Petition for Certiorari should be denied.

Respectfully submitted,

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September, 1966

APPENDIX

APPENDIX A

Final Decree of the Florida Circuit Court

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT

IN AND FOR DUVAL COUNTY, FLORIDA

IN CHANCERY

CASE NO. 66-2941-E DIVISION "B"

JACKSONVILLE TERMINAL COMPANY, a corporation,

Plaintiff,

—VS.—

BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association in its own right and as representative of its membership, and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood; and the members of said organization;

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, an unincorporated association in its own right and as representative of its membership and T. C. Bolin, individually and as an official of said brotherhood; and the members of said organization;

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association in its own right and as representative of its membership and the members of said organization,

Defendants.

Final Decree

This cause came on this day to be heard after due notice upon the plaintiff's application for a permanent injunction against the defendants, Brotherhood of Railroad Trainmen, an unincorporated association in its own right and as representative of its membership, and Ray Moore and Lowell Kennedy, individually and as officials of said brotherhood, and the members of said organization; Order of Railway Conductors and Brakemen, an unincorporated association in its own right and as representative of its membership, and T. C. Bolin, individually and as an official of said brotherhood, and the members of said organization; Brotherhood of Locomotive Firemen and Enginemen, an unincorporated association in its own right and as representative of its membership; and the members of said organization, having been previously heard on May 28th and 29th, 1966, on plaintiff's application for temporary injunction which, after consideration by the Court, was entered May 30th, 1966, against each of the above named defendants.

The Court has reviewed the testimony at the proceeding for temporary injunction, the briefs of the respective parties filed herein, and has considered the Stipulation filed herein by the parties July 29, 1966, as well as additional documentary evidence filed on behalf of both plaintiff and defendants.

The Court, having considered the argument of counsel and being advised in the premises, makes the following findings of fact and conclusion of law:

1. Plaintiff, Jacksonville Terminal Company ("Terminal Company"), is a private corporation organized and existing under the laws of the State of Florida, with its principal place of business in Jacksonville, Duval County, Florida. Plaintiff is engaged in the railroad terminal business at

Jacksonville, Florida, where it owns and operates a passenger station, yards, tracks, buildings and equipment; and provides passenger, freight and switching services for the Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, the Georgia Southern and Florida Railway Company, the Southern Railway Company, the Florida East Coast Railway Company and many industries and businesses of Duval County, Florida. The plaintiff and the other named rail carriers are all "employers" subject to the Railway Labor Act. Plaintiff also employs its own officers and employees who are responsible for the day-to-day operation of Terminal Company and has a separate labor agreement with the defendant Brotherhood of Railroad Trainmen covering Terminal Company employees only. There is no dispute under this agreement between Terminal Company and Brotherhood of Railroad Trainmen for which that defendant seeks to picket the premises of Terminal Company and said agreement remains in full force and effect. The other named labor organizations do not represent any employees on the property of Terminal Company and have no dispute with plaintiff.

2. The defendants Brotherhood of Railroad Trainmen, Order of Railway Conductors and Brakemen, and Brotherhood of Locomotive Firemen and Enginemen are all unincorporated labor organizations whose memberships are composed predominantly and overwhelmingly of employees of employers subject to the Railway Labor Act and are engaged primarily in representing such employees concerning labor disputes, rates of pay and working conditions in the railway industry.

3. The defendant Ray Moore is Deputy Vice President of the defendant Brotherhood of Railroad Trainmen, and

by his own admission is in charge of promoting the acts and things hereinafter enjoined. The defendants Lowell Kennedy and T. C. Bolin, individually and as officials of of the defendant brotherhoods, together with the membership of said brotherhoods, have participated in active concert with the defendant Ray Moore.

4. This action arises under the Constitution and laws of the State of Florida and this Court has jurisdiction of the subject matter and of the parties hereto.

5. On May 4, 1966, at or about 4:00 a.m., the defendant Brotherhood of Railroad Trainmen established picket lines at numerous locations surrounding the premises of plaintiff so that said premises were effectively cut off from all rail movement. Said pickets patrolled at all entrances and exits by rail, foot or vehicle and resulted in a substantial cessation of the activities and business of Terminal Company and caused the employees of said Terminal Company to fail to report to work. All defendants have announced their intention to cause such picketing and patrolling of the premises of plaintiff to be renewed unless this injunction issue, or unless the defendants are otherwise enjoined.

6. All of the persons picketing the premises of Terminal Company on May 4, 1966, were members of local lodges composed solely of employees of employers subject to the Railway Labor Act. All pickets were employees of the Florida East Coast Railway Company, an employer subject to the Railway Labor Act.

7. Counsel for defendants announced at the beginning of taking of evidence in this case and the Court finds that if the picketing was resumed as threatened, it would result in a virtual cessation of activities not only of the Terminal

Company but also of numerous industries in Duval County and throughout the remainder of the State of Florida. The picketing, if resumed, would adversely affect all of the people who are served by and do business with plaintiff and all railways served by the plaintiff. It would, further, adversely affect an entire economic area, from Duval County to Key West, Florida, and would cause economic strangulation of the entire state. The announced purpose of the picketing is to cause the plaintiff and its employees to cease furnishing services to the Florida East Coast Railway Company (FEC), against whom the defendant brotherhoods are now on strike, and thus to bring the operations of the FEC to a halt; the effect of the picketing is considerably more broad, as above stated.

8. The decision of this Court is not made upon the basis of violence. There is no evidence in the record of any violence or threat of violence involved in the picketing.

9. The Court concludes that the past and threatened picketing as described above is in violation of the law of the State of Florida and that this Court has the jurisdiction to enjoin the threatened picketing on that basis. The past and threatened picketing seeks to coerce plaintiff into embargoing the FEC in violation of the Restraint of Trade Laws of this State, Chapter 542, Florida Statutes. Further, the picketing seeks to force the plaintiff to violate its duties and obligations as a carrier under the Florida Transportation Act, F.S. §§ 351.12, 351.14, 351.15, 351.16, 351.17 and 351.19, and did and will constitute economic pressure in the nature of a secondary boycott which is illegal under Florida law. Finally, the past and threatened picketing did and will unjustifiably interfere with and interrupt plaintiff's constitutional right to carry on its business, and said

picketing constitutes the independent tort of unjustifiable interference with the contractual relationships between plaintiff and its shippers and between plaintiff and its employees. Plaintiff has been and will be subjected to irreparable injury for which no adequate remedy at law exists. It is, therefore,

ORDERED AND DECREED that the defendants, Brotherhood of Railroad Trainmen, Ray Moore, Lowell Kennedy, Order of Railway Conductors and Brakemen, T. C. Bolin, and Brotherhood of Locomotive Firemen and Enginemen, individually, and their officers, agents, servants, employees, representatives, members, attorneys and all other persons acting at the direction of or in active concert or participation with either the Brotherhood of Railroad Trainmen, the Order of Railway Conductors and Brakemen, or the Brotherhood of Locomotive Firemen and Enginemen, and all persons receiving notice of any such orders of the Court, are permanently enjoined and restrained from:

(a) Picketing the properties owned or operated by plaintiff in Jacksonville, Duval County, Florida, except at the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by FEC employees;

(b) Causing, directing, authorizing, recommending, sanctioning, or participating in the patrolling, picketing, or blockading of the entrances or exits used by the employees of plaintiff in connection with their work or in connection with plaintiff's land, buildings, facilities or other property operated, owned or controlled by plaintiff; PROVIDED, HOWEVER, that this order shall not apply to the reserved entrance located at Bay and Stuart Streets, Jacksonville, Florida, designated for use by FEC employees;

(c) Causing or inducing the employees of plaintiff who report for work at the Terminal Company to cease performing the duties of their employment;

(d) Interfering in any way with the operation of plaintiff's properties by plaintiff.

(e) This injunction is limited to the picketing of plaintiff's premises by the defendants arising out of defendants existing disputes with the Florida East Coast Railway Company.

It is FURTHER ORDERED AND DECREED that the plaintiff, Terminal Company, a corporation, and its surety, Federal Insurance Company, a corporation, be and they hereby are released and discharged from any and all further liability under the bond heretofore filed herein in the amount of $25,000.00 and said bond be and it hereby is cancelled and rendered null and void.

DONE and ORDERED in Chambers at Jacksonville, Duval County, Florida, this 29th day of July, A. D. 1966.

/s/ ROGER J. WAYBRIGHT
Circuit Judge

END